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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL WIEDEMAN, JOHN A FRYE,
FRANK D. MOBURG, and MICHAEL TSAY

Appeal 2008-3454
Application 10/035,334
Technology Center 3600

Oral Hearing Held: January 13, 2009

Before WILLIAM F. PATE, III, JOHN C. KERINS, and STEVEN D.A. McCARTHY, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

WILLIAM F. WESTERMAN, ESQUIRE
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The above-entitled matter came on for hearing on Tuesday, January 13, 2009, commencing at 9:40 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Kevin E. Carr, Notary Public.

PROCEEDINGS

JUDGE PATE: Mr. Westerman, we had a chance to go over the case beforehand so we're up to speed on the technology.

MR. WESTERMAN: Good.

JUDGE PATE: We would like to hear your arguments about patentability.

MR. WESTERMAN: All right. Well, let me first just mention that the claims on appeal are claims 1 through 13 and 25 through 30. Of these claims 1, 25 and 28 are independent, and I'll focus the discussion today on claim 1 because 25 and 28 are similar.

As you mentioned you're up to date on the technology. This has to do with a seat for a vehicle. This is not complex technology, so I think the structure is clear. I would just mention that one of the reasons for this invention is to allow additional room for the feet of the passenger behind the claimed seat. This is something that car makers are always looking to do.

I was going to mention briefly some items with regard to the reference. One minute here. With regard to the reference, the Lohr reference, I would like to just briefly review Fig 1 if it pleases the Board here. Fig 1 just includes a vertical support 11, and that's kind of one of the key elements that we have here, vertical support 11. There are also side pieces 3 and 4. Side piece 3 is mounted to the vertical support 11 and side piece 4 stands out. The side pieces each have a vertical branch, that's upstanding 1, and then the horizontal branch 7. Cross pieces 5 support the branches, the vertical and horizontal branches. Seat support 2 is what the

1 passenger or whoever it is actually sits on, and that has an upper portion 8
2 and lower portion 9.

3 I might just -- if I may briefly on column 3 of the Lohr reference just
4 to indicate what this, what the Lohr reference is directed to, and if I may just
5 briefly read here the paragraph beginning on line 34.

6 "In the different drawings one seat has been shown. This seat is
7 designed to be attached inside a public transportation vehicle, particularly an
8 urban vehicle, such as, for example, a tramway, a metro, a bus or any other
9 urban passenger transport vehicle. There are other conceivable uses for the
10 suspended seat, which remain within the scope of the invention, specifically,
11 in a train, car, a railway station, a waiting area for an urban transport vehicle,
12 or any other location where it would be advantageous to maintain free space
13 below the seats."

14 JUDGE PATE: Presumably these urban vehicles would have a roof
15 and a floor, though, right?

16 MR. WESTERMAN: Absolutely.

17 JUDGE PATE: And so that's the only thing that the claim actually
18 requires?

19 MR. WESTERMAN: Yes. So as I set forth in my brief I believe that
20 there are three important elements in claim 1, which are not met by the cited
21 reference. They are the central pillar extending from the floor to the roof of
22 the vehicle.

23 JUDGE McCARTHY: Counsel, is the term central pillar defined
24 anywhere in the specification?

25 MR. WESTERMAN: I think it's pretty clearly set forth on -- for
26 example on paragraph 4 on page 3 of the specification -- let me pull that out.

1 Paragraph 4, which is on page 3 of the specification, states that -- for
2 example, it states, "When a pair of seats is used each is located on an
3 opposite side of the central pillar. Thus the central pillar provides support
4 for passengers sitting in both seats."

5 This is a clear indication in my view that the central pillar is central,
6 in between two seats, that it's clearly supported by the drawings. It's hard for
7 me to imagine that there could be a question as to location of the central
8 pillar itself.

9 JUDGE KERINS: Counsel, if I may there. Claim 1 doesn't require
10 two seats, does it?

11 MR. WESTERMAN: That's correct, it does not.

12 JUDGE KERINS: So what is this pillar central to?

13 MR. WESTERMAN: It's central to the vehicle.

14 JUDGE KERINS: Central to the vehicle?

15 MR. WESTERMAN: Yes.

16 JUDGE KERINS: Are you in agreement with the Examiner that
17 claim 1 is directed to a sub-combination that excludes the vehicle?

18 MR. WESTERMAN: Claim 1 is directed to a sub-combination. The
19 Office Action and the Examiner's Answer say it's directed to a
20 sub-combination of the seat and the central pillar, but actually the
21 sub-combination is just the seat. The central pillar, it's an element of the
22 claim and so it's a part of the seat as claimed. But you're correct, it's -- the
23 central pillar is -- well, claim 1 is only directed to a seat. With the central
24 pillar it locates -- the language with regard to the vehicle, it helps to locate
25 the central pillar, although it's only -- there's only one seat in claim 1.

1 JUDGE KERINS: Counsel, if I could, do you have the Lohr patent in
2 front of you?

3 MR. WESTERMAN: Yes, I do.

4 JUDGE KERINS: Figure 8, which is on sheet 8 of the drawings, it
5 shows two seats back to back.

6 MR. WESTERMAN: That is correct.

7 JUDGE KERINS: It doesn't show the pillar, but if you compare it to
8 Figure 1 seemingly you would have a pillar that would have both seats
9 branching out from it in either direction. Wouldn't that be a central pillar?

10 MR. WESTERMAN: I don't believe it would, sir, because -- let me
11 go back to -- excuse me. If I might the specification on page 3, it describes
12 the central pillar provides for -- sorry -- "A pair of seats, when a pair of seats
13 is used each location is on an opposite side of the central pillar." When that
14 language is taken in conjunction with the drawings, which clearly show the
15 seats in what I would call side by side seating, and I think that's different
16 than what's referred, what's disclosed in Lohr.

17 Let me just go on unless you have any more questions specifically to
18 that.

19 JUDGE PATE: No, let's go on to two and three.

20 MR. WESTERMAN: The second point is that a seat bottom -- a seat
21 bottom directly affixed to and supported by said lower rib. This is clearly
22 illustrated in the drawings and also I believe that that is not disclosed in the
23 reference. For example if you take a look at Lohr, either Fig 1 or Fig 2, it
24 shows the seat support 2, which has an upper portion 8 and a lower portion
25 9. Lower portion 9 would be the seat.

1 JUDGE KERINS: Counsel, doesn't the Examiner take the position
2 that the horizontal part of the frame members are part of the seat bottom?

3 MR. WESTERMAN: My understanding of the rejection is that
4 cross pieces in claim 5 are the lateral ribs and whether or not those
5 horizontal branches are actually part of the seat bottom. My interpretation is
6 that it is simply -- the fact that it's directly affixed to is -- I believe the seat
7 bottom is lower portion 9 and it's not directly fixed to the cross piece 5.

8 JUDGE KERINS: While I agree that the seat bottom part 9 is not
9 directly fixed to the rib 5, the Examiner's position is that the lower horizontal
10 elements 7 are part of the seat bottom and those are directly connected to the
11 rib 5. I'm asking you why is that position unreasonable?

12 MR. WESTERMAN: Well, I disagree with that position of course. I
13 believe that it's clearly shown on the drawing as separate pieces. The way I
14 interpret it directly is immediately or without something in between, and
15 that's a different interpretation than I have. I think that the lower portion 9 is
16 the seat bottom here in this drawing, in this reference.

17 JUDGE KERINS: Can you tell us why it's unreasonable, why the
18 Examiner's interpretation is unreasonable?

19 MR. WESTERMAN: Well, I happen to see two different pieces, the
20 lower part of seat support, which is lower portion 9, and the portions that
21 extend outwardly, the horizontal branches that extend outwardly from the
22 side piece I guess you would call them. Those are all a part of the horizontal
23 branch or a part of the side pieces 3 and 4 and are not just the seat bottom.
24 To me I believe they're different pieces and it's not the same disclosure.

25 Now with regard to the final point was that the seat back is fixed to
26 and supported by said intermediate rim. Similar to the point before it's fixed

1 to -- in the lower reference it's fixed to the side pieces 3 and 4 and not the
2 rib.

3 JUDGE KERINS: Counsel, on that point as we discussed with the
4 seat bottom you have the claim saying it's directly affixed to the rib whereas
5 with the seat back it's simply fixed to and supported by the rib. Does that
6 mean it doesn't necessarily have to be directly connected to the rib?

7 MR. WESTERMAN: Well, the word directly is not in the claim,
8 you're correct. I simply believe that it's not fixed, though, to those cross
9 pieces at 5.

10 Okay. Any more questions on those points? I just have one or two
11 points that I would like to make.

12 JUDGE PATE: Okay, if you can hurry through it, though, that would
13 be good.

14 MR. WESTERMAN: Sure. I'll try. I just wanted to make a quick
15 point with regard to the fact that the Office Action and the Examiner's
16 Answer suggest that the pillar 11 -- and this is on page 9 of my brief so you
17 have this, but I just want to reinforce the fact that it suggested that the
18 central pillar 11 taught by Lohr, and I'm just reading quickly from this quote,
19 "could in fact be disposed in a central area of the vehicle and have another
20 seating area disposed on the opposing sides of pillar, which is common and
21 inherent in many mass transit vehicles."

22 "Applicant is reminded that there does not have to be stated -- there
23 does not have to be a stated disclosure by Lohr of the central pillar," but,
24 "what would one of ordinary skill in the art glean" -- I think he means
25 glean -- "from the disclosure of Lohr who shows a pillar with a lateral rib,
26 which is in accordance so far as defined by the claimed invention."

1 Just the fact that it suggested that Lohr could have been disposed, the
2 central pillar of Lohr could have been disposed in the central area that this is
3 common and inherent in many mass transit vehicles, I certainly don't agree
4 with that. I get on the subway here and there's no central pillar in which
5 seats are cantilevered out.

6 The fact that -- the question is what would one of ordinary skill in the
7 art glean from the disclosure. These standards could be disclosed or it's
8 common and inherent or one of ordinary skill in the art can glean from the
9 disclosure, these are not the standards of 102(e). 102(e) calls for the
10 invention as described, and I think that's the key here. I believe the
11 invention was not described in Lohr and does not rise to the level of
12 anticipating the claims that are on appeal here in this case.

13 Are there any more questions?

14 JUDGE PATE: No, we have no more questions for you, Mr.
15 Westerman, so we're going to take this case under advisement.

16 MR. WESTERMAN: Thank you for your time.

17 JUDGE PATE: Thank you.

18 (Whereupon, at 10:00 a.m., the proceedings were concluded.)